IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 28055 of 2004(M)

OS.170/1990 of SUB COURT, PATHANAMTHITTA
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PETITIONER:

A.T. THOMAS, EDAMANNIL VEETTIL,
ANGADI, RANNI.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS:
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1. P.V. KURIEN, PADINJATTETHIL HOUSE,
ANGADI, RANNI.

2. P.K. VARGHESE, AMBALATHUM KAVILAYA
THOPPIL VEEDU, ANGADI MURI, RANNI.

BY ADV. SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE OBJECTION FILED TO IA NO.636 OF 1990 IN OS NO.170 OF 1990 BEFORE SUB COURT, PATHANAMTHITTA.

EXT.P2 : TRUE COPY OF THE SALE CERTIFICATE DT.07.12.1998.

EXT.P3 : TRUE COPY OF THE EA 132 OF 1999 DT.28.9.1999 FILED BY FIRST RESPONDENT FOR SETTING ASIDE THE SALE.

EXT.P4 : TRUE COPY OF THE COMMISSION APPLICATION DT.7.7.04 FOR ASCERTAINING THE IMPROVEMENTS IN THE PROPERTY.

EXT.P5 : TRUE COPY OF THE EA FILED BY 2ND REPSONDENT DT.5.12.02 TO SET ASIDE SALE OF THE PROPERTY.

EXT.P6 : TRUE COPY OF THE ORDER OF THE SUB COURT DT.21.7.04.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28055 OF 2004

Dated this the 12th day of June, 2007

JUDGMENT

Ext.P6 order passed by the execution court in a proceeding for execution of a money decree by sale of properties attached before judgment allowing an application, EA No.142 of 2004, filed by the judgment debtor for appointment of a commission is under challenge. Obviously, the commission application was not the only application which was pending before the learned Subordinate Judge. There was application for delivery of EA No.5 of 1999 filed by the decree holder seeking delivery of the property on the strength of the sale sannad which the court had given to him. EA No. 132 of 1999 application under Order XXI Rule 90 CPC for setting aside the sale was also before the learned Sub Judge. Yet another application filed by the son of the judgment debtor, the 2nd respondent, lodging a claim to the property was also pending.

2. The grievance of the petitioner is that while all these applications were pending, the learned Sub Judge has hastily allowed the commission application in a casual manner taking the view that he thinks that " it is better to allow the petition in the interest of justice".

3. Heard both sides. Considering the fact that the commission

was sought for vide EA No.142 of 1994 only for the purpose of collecting material in the context of EA No.5 of 1999 and that the very maintainability of EA No.5 of 1999 was seriously challenged by the decree holder, the court below in my view was not justified in allowing the commission application hastily.

4. During the course of hearing, I put a query to the counsel for the respondents whether the respondents are ready and willing to pay off whatever amounts which are due to the decree holder on account of the original decree debt and the sales certificate presently held by him. The learned counsel who appears for both the respondents, the father and son submitted that the respondents are ready and willing to pay off the amounts. I record the above submission.

5. Considering the submissions addressed before me, I set aside Ext.P6 and direct the court below to pass fresh orders on the same. The court below will take up EA No.5 of 1999 filed by the writ petitioner decree holder first, hear the parties on the objections field by the respondents to that EA and pass orders on those objections. If the court below feels that final orders on EA No.5 of 1999 is to be passed only after a decision is taken on EA No.132 of 1999, then the court below will hear the parties preliminarily regarding the maintainability of EA No.132 of 1999 and take a decision whether that EA is maintainable,

since the only ground raised therein is gross under valuation in the matter of publication and conduct of sale. After giving a verdict on the question of maintainability of EA No.132 of 1999 only, the learned judge will proceed further with that EA. The EA filed by the 2nd respondent need be taken up by the court below only after the EAs filed by the petitioner and the 1st respondent judgment debtor are disposed of.

It is further ordered that before complying with any of the above directions, the learned Sub Judge will give one opportunity to the judgment debtor to pay off all the amounts due to decree holder in full and final settlement of all his claims. The other directions given herein above need be complied with only if it is found that the liability is not settled availing the opportunity so given.

PIUS C. KURIAKOSE, JUDGE

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